

## 2013 DRAFTING REQUEST

### Bill

Received: **3/22/2013** Received By: **pkahler**  
Wanted: **Today** Same as LRB:  
For: **Dean Knudson (608) 266-1526** By/Representing: **Matt Rossetto**  
May Contact: Drafter: **pkahler**  
Subject: **Insurance - other insurance** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Rep.Knudson@legis.wisconsin.gov**  
Carbon copy (CC) to: **Tamara.Dodge@legis.wisconsin.gov**

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Exclude charitable gift annuities from regulation by OCI

---

### Instructions:

See attached

---

### Drafting History:

| <u>Vers.</u> | <u>Drafted</u>       | <u>Reviewed</u>       | <u>Typed</u>          | <u>Proofed</u> | <u>Submitted</u>      | <u>Jacketed</u>    | <u>Required</u> |
|--------------|----------------------|-----------------------|-----------------------|----------------|-----------------------|--------------------|-----------------|
| /?           | pkahler<br>3/26/2013 | csicilia<br>3/29/2013 | jmurphy<br>3/29/2013  | _____          |                       |                    |                 |
| /P1          | pkahler<br>4/4/2013  |                       |                       | _____          | mbarman<br>3/29/2013  |                    |                 |
| /1           |                      | csicilia<br>4/16/2013 | jfrantze<br>4/16/2013 | _____          | sbasford<br>4/16/2013 | srose<br>4/16/2013 | State           |

FE Sent For:

→ 04-16-2013  
→ ("1")

<END>

Requested  
by Matt Rossetto

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| May Contact: |                                    | Drafter:         | <b>pkahler</b>       |
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## **Instructions:**

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Received By: pkahler

Wanted: Soon

Same as LRB:

For: Dean Knudson (608) 266-1526

By/Representing: Matt Rossetto

May Contact:

Drafter: pkahler

Subject: Insurance - other insurance

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Extra Copies:

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|----|----------------------|-----------------------|----------------------|-------|--|--|--|

|     |  |  |  |   |                      |  |  |
|-----|--|--|--|---|----------------------|--|--|
| /P1 |  |  |  |  | mbarman<br>3/29/2013 |  |  |
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|    |         |  |  |  |  |  |  |
|----|---------|--|--|--|--|--|--|
| /? | pkahler |  |  |  |  |  |  |
|----|---------|--|--|--|--|--|--|

*PI - 3/28*  
*gs*  
*13*  
*Jmc*  
*3/29*  
*self*

FE Sent For:

<END>



STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Created new LRB number from 1759

since new provisions raised issues

better dealt with in a preliminary  
draft.

PJK

## **Kahler, Pam**

---

**From:** Rossetto, Matt  
**Sent:** Tuesday, March 19, 2013 5:46 PM  
**To:** Kahler, Pam  
**Subject:** LRB 1759

Hi Pam-

I wanted to ask if you wouldn't mind inserting the Wisconsin equivalent of the language/requirement below into LRB 1759 re: gift annuities. This is the language Iowa operates under now, we're looking for something similar. My understanding is that since we would be exempting gift annuities from chs. 600-646, no initial notification would be required. We'd like to at the very least make sure that the charity is on file with the state. Per our phone conversation earlier, we would like to have the enforcement language below also inserted.

In addition, would it be prudent to delete section 615 of the statutes since it specifically deals with gift annuities and we are exempting them from the rest of the statute?

Feel free to give me a call with any questions. Thank you for your work on this!

Matt

### **Actions Required for Exemption:**

Written notification must be given to the Iowa Insurance Division by the date it enters into its first qualified charitable gift annuity agreement. The notice must contain the signature of an officer or director of the charity, identify the name and address of the organization, include a copy of the IRS letter granting the charity tax-exempt status and certify that the charity is a bona fide charitable organization and that the annuities offered are qualifying charitable gift annuities as defined by state law.

### **Disclosure and Agreement Content Requirements:**

The following specific disclosure statement must be included in all gift annuity agreements:

"A qualified charitable gift annuity is not insurance under the laws of Iowa and is not subject to regulation by the commissioner or protected by an insurance guaranty fund or an insurance guaranty association."

### **Compliance/Enforcement:**

Enforcement may be made by demand letter. Failure to qualify and comply with the above provisions shall permit the Iowa Insurance Commissioner to fine the charity up to \$1,000 per gift annuity agreement until it does comply. Further penalties may be imposed after a hearing, with fines up to \$50,000.

Matt Rossetto  
Office of Representative Dean Knudson

30<sup>th</sup> Assembly District  
(608) 266-1526

**Kahler, Pam**

---

**From:** Rossetto, Matt  
**Sent:** Tuesday, March 19, 2013 6:00 PM  
**To:** Kahler, Pam  
**Subject:** Iowa statute

Pam-

Below is the link to the Iowa statute that refers to gift annuities for your convenience.

<https://www.legis.iowa.gov/DOCS/ACO/IC/LINC/Chapter.508F.pdf>

Matt Rossetto  
Office of Representative Dean Knudson  
30<sup>th</sup> Assembly District  
(608) 266-1526

## CHAPTER 508F

## CHARITABLE GIFT ANNUITIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507B.3, 508C.3, 508C.5, 669.14, 670.7

|        |   |        |   |
|--------|---|--------|---|
| 508F.1 | Definitions.  | 508F.5 | Failure to comply with requirements.    |
| 508F.2 | Qualified charitable gift annuity is not insurance. | 508F.6 | Penalties.                              |
| 508F.3 | Annuity agreement — notice to donor.                | 508F.7 | Not unfair or deceptive trade practice. |
| 508F.4 | Notice filed with the commissioner.                 | 508F.8 | Rules.                                  |

**508F.1 Definitions.**

As used in this chapter, unless the context clearly indicates otherwise:

1. "Charitable gift annuity" means a transfer of property by a donor to a charitable organization in return for an annuity payable over one or two lives, if the actuarial value of the annuity is less than the value of the property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.
2. "Charitable organization" means an entity described by any of the following:
  - a. Section 501(c)(3) of the Internal Revenue Code.
  - b. Section 170(c) of the Internal Revenue Code.
3. "Commissioner" means the commissioner of insurance.
4. "Internal Revenue Code" means the Internal Revenue Code of 1986 as designated by the Tax Reform Act of 1986, as amended to a date designated by rules adopted by the commissioner.
5. "Property" means anything of value that is subject to ownership, and includes but is not limited to property classified as real, personal, mixed, tangible or intangible, or any present or future interest in such property.
6. "Qualified charitable gift annuity" means a charitable gift annuity that is described by section 501(m)(5) or 514(c)(5) of the Internal Revenue Code, if all of the following apply:
  - a. The annuity agreement is issued by a charitable organization.
  - b. On the date that the annuity agreement is issued, the charitable organization has a minimum value of the lesser of three hundred thousand dollars or five times the face amount of total outstanding annuities in unrestricted cash, cash equivalents, or publicly traded securities. However, the total outstanding annuities as provided in this paragraph do not include assets funding the annuity agreement.
  - c. The charitable organization has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years.

2001 Acts, ch 28, §2

**508F.2 Qualified charitable gift annuity is not insurance.**

1. The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.
2. A charitable gift annuity that meets the requirements of a qualified charitable gift annuity shall be deemed to be a qualified charitable gift annuity for purposes of this chapter, regardless of whether the charitable gift annuity was issued prior to July 1, 2001. The issuance of that charitable gift annuity shall not be construed as engaging in the business of insurance in this state.

2001 Acts, ch 28, §3

**508F.3 Annuity agreement — notice to donor.**

An agreement for a qualified charitable gift annuity executed by a charitable organization and a donor shall be in writing. The annuity agreement shall include a notice stating that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner or protected by an insurance guaranty fund or an

insurance guaranty association. The notice required by this section shall be in a separate paragraph and in a type size no smaller than that generally used in the annuity agreement.

2001 Acts, ch 28, §4

Referred to in §508F.5

**508F.4 Notice filed with the commissioner.**

1. A charitable organization that issues qualified charitable gift annuities in this state on and after July 1, 2001, shall file a notice with the commissioner in writing not later than the date on which it executes the organization's first qualified charitable annuity agreement. All of the following shall apply:

- a. The notice must be signed by an officer or director of the charitable organization.
- b. The notice must identify the name and address of the charitable organization.
- c. The notice must include a copy of the determination letter issued by the internal revenue service.
- d. The notice must certify that the charitable organization is a bona fide charitable organization and that the annuities issued by the charitable organization are qualified charitable gift annuities.

2. The charitable organization is not required to submit additional information, unless the information is to be used to determine appropriate penalties that may be applicable under section 508F.5.

2001 Acts, ch 28, §5

Referred to in §508F.5

**508F.5 Failure to comply with requirements.**

1. The failure of a charitable organization to comply with the requirements of sections 508F.3 and 508F.4 does not prevent a charitable gift annuity that otherwise meets the requirements of this chapter from constituting a qualified charitable gift annuity.

2. The commissioner shall enforce performance of the requirements of sections 508F.3 and 508F.4. The commissioner may do any of the following:

- a. Send a letter by restricted certified mail to the charitable organization demanding that the charitable organization comply with this chapter.
- b. Establish and impose civil penalties on the charitable organization in an amount not to exceed one thousand dollars for each qualified charitable gift annuity issued until the charitable organization complies with the requirements of this chapter.

2001 Acts, ch 28, §6

Referred to in §508F.4

**508F.6 Penalties.**

The commissioner may determine, after hearing, that the issuance of an annuity is not in compliance with this chapter and that the entity issuing the annuity is subject to the provisions and penalties of chapters 507A and 507B.

2001 Acts, ch 28, §7

**508F.7 Not unfair or deceptive trade practice.**

The issuance of a qualified charitable gift annuity does not constitute a violation of chapter 507B.

2001 Acts, ch 28, §8

**508F.8 Rules.**

The commissioner may adopt rules pursuant to chapter 17A necessary to administer and enforce this chapter.

2001 Acts, ch 28, §9

# **“RESEARCH APPENDIX”**

*... Drafting History Reproduction Request Form ...*



**DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN**

(Request Made By: PJK) (Date: 3 / 26 / 13)

## **Note:**

***BOTH DRAFTS SHOULD HAVE THE  
SAME “REQUESTOR”***

*(exception: companion bills)*



<sup>2013</sup> ☒ Please transfer the drafting file for  
**2011 LRB** 1759 (For: Rep. / Sen. Knudson)  
to the drafting file for  
**2013 LRB** 1973 (For: Rep. / Sen. Knudson)

**OR**

☒ Please copy the drafting file for  
**2013 LRB** -1759 / alp (include the version) (For: Rep. / Sen. Knudson)  
and place it in the drafting file for  
**2013 LRB** -1973 (For: Rep. / Sen. Knudson)

Are These “Companion Bills” ?? ... Yes ☒ No

If yes, who in the initial requestor’s office authorized the copy/transfer of the drafting history  
 (“guts”) from the original file: \_\_\_\_\_

*Knudson is appropriate (I get  
a new LRB number - it's the  
same draft, really)*



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1759/F

PJK:cjs:jf

1973/171

stays r m not run

(use 1759/102/12)

they are the same -

2013 BILL

Dir to  
Dillon  
(in 3-26)

Gen Cat

and providing  
a penalty

- 1 AN ACT *to create* 632.65 of the statutes; **relating to:** exemption from regulation
- 2 for certain annuities.

***Analysis by the Legislative Reference Bureau***

An annuity is an insurance contract under which the insurer agrees to pay the person covered under the annuity (annuitant) periodic payments, starting immediately or at a future date, for a set period of time or an indefinite period of time, such as for the remainder of the annuitant's life. Annuities and their sale are regulated by the office of the commissioner of insurance (OCI). This bill exempts from all regulation by OCI an annuity: 1) that is established under a transaction that is treated, for federal income tax purposes, partly as a charitable contribution and partly as an investment in an annuity contract, and 2) for which the obligation to pay is not an "acquisition indebtedness" under a provision in the Internal Revenue Code. To meet the second criterion just described, an annuity must be the sole consideration issued in exchange for property, if the value of the annuity is less than 90 percent of the value of the property; must be payable over the life of one or two individuals in being at the time the annuity is issued; and must be payable under a contract that does not guarantee a minimum amount, or specify a maximum amount, of payments and that does not provide for an adjustment in the amount of the annuity payments by reference to the income received from the transferred, or any other, property.

Insert  
A

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***



## BILL

## SECTION 1

1 SECTION 1. 632.65 of the statutes is created to read:

2 **632.65 Annuities exempt from regulation.** Notwithstanding any provision

3 of chs. 600 to 646 to the contrary, an annuity that satisfies all of the following criteria  
4 is not subject to regulation under chs. 600 to 646: Insert 2-4

5 (a) (1) The annuity is established under a transaction that, for federal income tax  
6 purposes, is treated partly as a charitable contribution under section 170 of the  
7 Internal Revenue Code and partly as an investment in an annuity contract under  
8 section 72 of the Internal Revenue Code.

9 (b) (2) The annuity meets the requirements of an annuity for which the obligation  
10 to pay is excluded from the definition of "acquisition indebtedness" under section 514

11 (c) (5) of the Internal Revenue Code.

12 (END)

Insert 2-11

D-11

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1973/ins  
PJK:.....

P1  
in not run

**INSERT A**

(X) This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

(END OF INSERT A)

**INSERT 2-4**

1 In this section, "qualified charitable gift annuity" means an annuity that  
2 satisfies all of the following

(END OF INSERT 2-4)

**INSERT 2-11**

3 (2) Except as provided in this section, notwithstanding any provision of chs.  
4 600 to 646 to the contrary, a qualified charitable gift annuity is not subject to  
5 regulation under chs. 600 to 646. ✓

6 (3) An agreement for a qualified charitable gift annuity shall include the  
7 following disclosure statement: "A qualified charitable gift annuity is not insurance  
8 under the laws of this state and is not subject to regulation by the commissioner of  
9 insurance of this state or protected by an insurance guaranty fund or an insurance  
10 guaranty association."

11 (4) A charitable organization that issues qualified charitable gift annuities in  
12 this state shall provide written notice to the commissioner no later than the date by  
13 which it executes its first qualified charitable gift annuity agreement. The notice  
14 shall do all of the following:

- 15 (a) Contain the signature of an officer or director of the charitable organization.  
16 (b) Identify the name and address of the charitable organization.

↓

*Ins 2-11 contd*

1 (c) Include a copy of the letter from the Internal Revenue Service granting the  
2 charitable organization tax-exempt status as an entity described under section 501  
3 (c) (3) of the Internal Revenue Code.

4 (d) Certify that the annuities issued by the charitable organization are qualified  
5 *paren* → charitable gift annuities.

6 (5) (a) If a charitable organization that issues qualified charitable gift  
7 annuities does not comply with the requirements of this section, the commissioner  
8 may, by certified mail, send the charitable organization a letter demanding that it  
9 comply with the requirements.

10 (b) If, after receipt of the demand letter, the charitable organization fails to  
11 comply with the requirements of this section, the commissioner may order the  
12 charitable organization to pay any of the following forfeitures:

13 1. If the charitable organization does not provide written notice to the  
14 commissioner under sub. (4), or if the written notice does not include all of the  
15 information required under sub. (4), a forfeiture of up to \$1,000 for each qualified  
16 charitable gift annuity issued by the charitable organization after the date on which  
17 the charitable organization was required to send the written notice. ✓

18 2. A forfeiture of up to \$1,000 for each qualified charitable gift annuity issued  
19 by the charitable organization *under an agreement* that does not contain the disclosure statement under  
20 sub. (3). ✓

(END OF INSERT 2-11)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1973/2dn

PJK:.....

*r m vol run*

*ys*

*late -*

I gave this draft a new LRB number so that I could go back to a preliminary version.

For the time being, I have required a charitable organization that issues qualified charitable gift annuities to provide notice to OCI. Do you want to define a "charitable organization"? The statutes currently have five definitions: ss. 11.01 (2), 29.89 (1), 134.71 (1) (am), 440.41 (1), and 895.51 (1) (b). On the other hand, instead of using the term "charitable organization," I could use the phrase at the beginning of s. 615.04, beginning with "A domestic or foreign corporation" and ending with "philanthropic activities." Let me know how you wish to proceed.

I was a little confused about the instructions for the notice provision. I have drafted it so that a charitable organization is required to provide notice to OCI when it issues its *first* qualified charitable gift annuity. Have any such annuities already been issued? If so, how do you want to address that issue? For example, do you want to require notice of the first one issued after the effective date, or notice of all that have been issued? On the other hand, perhaps you simply want a charitable organization to send notice to OCI that it issues qualified charitable gift annuities. If so, what timing do you want to specify?

Do you want to specify a time period within which a charitable organization must comply after receiving a demand letter before forfeitures may be ordered? Have I correctly interpreted the reasons for the forfeitures of up to \$1,000? What would further penalties of up to \$50,000 be imposed for after a hearing?

I have not repealed ch. 615 for two reasons: 1) I'm not sure the chapter applies to the specific annuities that are defined in the bill; and 2) the chapter seems to regulate the issuers of the annuities rather than the annuities, themselves. In addition, I have notwithstanding all contrary provisions in chs. 600 to 646, so that would include ch. 615.

Note that the definition of a "charitable gift annuity" under federal law is not exactly the same as the definition we have included in the bill. I do not know if the difference is substantive or, if so, if that has any effect on what you are trying to accomplish.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1973/P1dn

PJK:cjs:jm

March 29, 2013

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Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1973/P1dn  
PJK:cjs:jm

March 29, 2013

*Per Matt on 4-2*

I gave this draft a new LRB number so that I could go back to a preliminary version.

For the time being, I have required a charitable organization that issues qualified charitable gift annuities to provide notice to OCI. Do you want to define a "charitable organization"? The statutes currently have five definitions: ss. 11.01 (2), 29.89 (1), 134.71 (1) (am), 440.41 (1), and 895.51 (1) (b). On the other hand, instead of using the term "charitable organization," I could use the phrase at the beginning of s. 615.04, beginning with "A domestic or foreign corporation" and ending with "philanthropic activities." Let me know how you wish to proceed.

*use this phrase*

I was a little confused about the instructions for the notice provision. I have drafted it so that a charitable organization is required to provide notice to OCI when it issues its *first* qualified charitable gift annuity. Have any such annuities already been issued? If so, how do you want to address that issue? For example, do you want to require notice of the first one issued after the effective date, or notice of all that have been issued? On the other hand, perhaps you simply want a charitable organization to send notice to OCI that it issues qualified charitable gift annuities. If so, what timing do you want to specify?

*←*

Do you want to specify a time period within which a charitable organization must comply after receiving a demand letter before forfeitures may be ordered? Have I correctly interpreted the reasons for the forfeitures of up to \$1,000? What would further penalties of up to \$50,000 be imposed for after a hearing?

*45 days*  
*leave out*  
*yes*

I have not repealed ch. 615 for two reasons: 1) I'm not sure the chapter applies to the specific annuities that are defined in the bill; and 2) the chapter seems to regulate the issuers of the annuities rather than the annuities, themselves. In addition, I have notwithstanding all contrary provisions in chs. 600 to 646, so that would include ch. 615.

Note that the definition of a "charitable gift annuity" under federal law is not exactly the same as the definition we have included in the bill. I do not know if the difference is substantive or, if so, if that has any effect on what you are trying to accomplish.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

## Kahler, Pam

---

**From:** Rossetto, Matt  
**Sent:** Tuesday, April 02, 2013 5:52 PM  
**To:** Kahler, Pam  
**Subject:** LRB 1973

Hi Pam-

After speaking to Dean, we've decided we are not going to try to apply the enforcement procedures in s601.64. The \$1000/annuity fine assessed 45 days after a demand letter is issued will suffice. I think that should clear up the issues we had. If you could make the changes we discussed earlier today and then take this from a preliminary to an introducible draft, that would be great. We're still trying to get this bill a hearing on the 10<sup>th</sup> if at all possible. Thank you!

Matt

Matt Rossetto  
Office of Representative Dean Knudson  
30<sup>th</sup> Assembly District  
(608) 266-1526

for PJK

draft was changed from /P1 to /P2 but

never submitted - was changed

to /1 with modifications to /P1,

and then submitted

(now, P2 never existed)





Now  
State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1973/01

PJK:cjs:jm

stays v m is run

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

use  
(in 4-4)

Ger Cat

1 AN ACT *to create* 632.65 of the statutes; **relating to:** exemption from regulation

2 for certain annuities and providing a penalty.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

Insert A-2

Insert A-1

3 SECTION 1. 632.65 of the statutes is created to read:

4 **632.65 Annuities exempt from regulation.** (1) In this section, <sup>Q</sup>qualified

5 charitable gift annuity” means an annuity that satisfies all of the following:

6 1. (a) The annuity is established under a transaction that, for federal income tax

7 purposes, is treated partly as a charitable contribution under section 170 of the

8 Internal Revenue Code and partly as an investment in an annuity contract under

9 section 72 of the Internal Revenue Code.

Insert 1-4

Use 2x7

1 2. (b) The annuity meets the requirements of an annuity for which the obligation  
2 to pay is excluded from the definition of "acquisition indebtedness" under section 514  
3 (c) (5) of the Internal Revenue Code.

4 (2) Except as provided in this section, notwithstanding any provision of chs.  
5 600 to 646 to the contrary, a qualified charitable gift annuity is not subject to  
6 regulation under chs. 600 to 646.

7 (3) An agreement for a qualified charitable gift annuity <sup>that is issued</sup> shall include the  
8 following disclosure statement: "A qualified charitable gift annuity is not insurance  
9 under the laws of this state and is not subject to regulation by the commissioner of  
10 insurance of this state or protected by an insurance guaranty fund or an insurance  
11 guaranty association."

12 (4) A charitable organization that issues qualified charitable gift annuities in  
13 this state shall provide written notice to the commissioner no later than the date on  
14 which it executes its first qualified charitable gift annuity agreement. <sup>after the</sup> The notice  
15 shall do all of the following:

16 (a) Contain the signature of an officer or director of the charitable organization.

17 (b) Identify the name and address of the charitable organization.

18 (c) Include a copy of the letter from the Internal Revenue Service granting the  
19 charitable organization tax-exempt status as an entity described under section 501  
20 (c) (3) of the Internal Revenue Code.

21 (d) Certify that the annuities issued by the charitable organization are  
22 qualified charitable gift annuities.

23 (5) (a) If a charitable organization that issues qualified charitable gift  
24 annuities does not comply with the requirements of this section, the commissioner

effective date of this subsection, [LRB inserts date]

1 may, by certified mail, send the charitable organization a letter demanding that it  
2 comply with the requirements.

3 (b) If, <sup>→ within 45 days</sup> after receipt of the demand letter, the charitable organization fails to  
4 comply with the requirements of this section, the commissioner may order the  
5 charitable organization to pay any of the following forfeitures:

6 1. If the charitable organization does not provide written notice to the  
7 commissioner under sub. (4), or if the written notice does not include all of the  
8 information required under sub. (4), a forfeiture of up to \$1,000 for each qualified  
9 charitable gift annuity issued by the charitable organization after the date on which  
10 the charitable organization was required to send the written notice.

11 2. A forfeiture of up to \$1,000 for each qualified charitable gift annuity issued  
12 by the charitable organization under an agreement that does not contain the  
13 disclosure statement under sub. (3).

14 (END)

→ after the effective date  
of this subdivision, [LRB  
inserts date]

note  
D



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1759/1  
PJK:cjs:jf

2013 BILL

Insert A-1

1  
2

AN ACT *to create* 632.65 of the statutes; relating to: exemption from regulation  
for certain annuities.

*Analysis by the Legislative Reference Bureau*

¶ An annuity is an insurance contract under which the insurer agrees to pay the person covered under the annuity (annuitant) periodic payments, starting immediately or at a future date, for a set period of time or an indefinite period of time, such as for the remainder of the annuitant's life. Annuities and their sale are regulated by the office of the commissioner of insurance (OCI). This bill exempts from all regulation by OCI an annuity: 1) that is established under a transaction that is treated, for federal income tax purposes, partly as a charitable contribution and partly as an investment in an annuity contract, and 2) for which the obligation to pay is not an "acquisition indebtedness" under a provision in the Internal Revenue Code. To meet the second criterion just described, an annuity must be the sole consideration issued in exchange for property, if the value of the annuity is less than 90 percent of the value of the property; must be payable over the life of one or two individuals in being at the time the annuity is issued; and must be payable under a contract that does not guarantee a minimum amount, or specify a maximum amount, of payments and that does not provide for an adjustment in the amount of the annuity payments by reference to the income received from the transferred, or any other, property.

a qualified charitable  
gift annuity, which  
is defined in the bill as

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**2013-2014 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1973/1ins  
PJK:.....

**INSERT A-2**

4 The bill requires that an agreement for a qualified charitable gift annuity contain a disclosure statement that the annuity is not insurance, is not subject to regulation by the commissioner of insurance (commissioner), and is not protected by an insurance guaranty fund or association. The bill requires a charitable organization that issues qualified charitable gift annuities to provide written notice that satisfies specified requirements to the commissioner no later than the date on which it executes its first qualified charitable gift annuity agreement after the enactment of the bill. If a charitable organization does not comply with the requirements under the bill, the commissioner may send the charitable organization a letter demanding compliance and may order a charitable organization that does not comply within 45 days after receiving such a demand letter to pay a forfeiture of up to \$1,000 for each qualified charitable gift annuity issued out of compliance.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

(END OF INSERT A-2)

**INSERT 1-4**

1 4 (a) "Charitable organization" means a domestic or foreign corporation  
2 conducted without profit and engaged solely in bona fide charitable, religious,  
3 missionary, educational, or philanthropic activities.

4 4 (b)

(END OF INSERT 1-4)

**INSERT 2-7**

5 4 A charitable organization that issues qualified charitable gift annuities shall  
6 include in

(END OF INSERT 2-7)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1973/1dn

PJK:.....

gs

*date -*

Matt:

I think it is arguable that, even without saying it explicitly, the enforcement and penalty provisions of s. 601.64 apply to a charitable organization under this draft that does not comply with the requirements of this draft. The draft says that, notwithstanding any provisions of the insurance chapters that are in conflict, qualified charitable gift annuities aren't subject to regulation by OCI. The draft does not say that the issuer of such an annuity is not subject to regulation. It seems to me that if the statutes say that a charitable organization that issues a qualified charitable gift annuity must do certain things, that is regulating the issuer and not the annuity. I do not know if OCI would interpret the language in the same way. I have changed the language at the beginning of proposed s. 632.65 (3) so that it is a requirement for the issuer and not for the annuity. ✓

↓  
If, in fact, OCI does interpret the language <sup>as allowing</sup> to allow regulation of the issuer of the annuity, there could be an ambiguity about whether OCI may choose to enforce proposed s. 632.65 under either s. 601.64 or the new penalty provision in the bill. You might want to clarify whether OCI has that discretion or is limited to enforcing proposed s. 632.65 under the new penalty provision in this bill. ✓

Pamela J. Kahler  
Senior Legislative Attorney  
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E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1973/1dn  
PJK:cjs:jf

April 16, 2013

Matt:

I think it is arguable that, even without saying it explicitly, the enforcement and penalty provisions of s. 601.64 apply to a charitable organization under this draft that does not comply with the requirements of this draft. The draft says that, notwithstanding any provisions of the insurance chapters that are in conflict, qualified charitable gift annuities aren't subject to regulation by OCI. The draft does not say that the issuer of such an annuity is not subject to regulation. It seems to me that if the statutes say that a charitable organization that issues a qualified charitable gift annuity must do certain things, that is regulating the issuer and not the annuity. I do not know if OCI would interpret the language in the same way. I have changed the language at the beginning of proposed s. 632.65 (3) so that it is a requirement for the issuer and not for the annuity.

If, in fact, OCI does interpret the language as allowing regulation of the issuer of the annuity, there could be an ambiguity about whether OCI may choose to enforce proposed s. 632.65 under either s. 601.64 or the new penalty provision in the bill. You might want to clarify whether OCI has that discretion or is limited to enforcing proposed s. 632.65 under the new penalty provision in this bill.

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**Rose, Stefanie**

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**From:** Rossetto, Matt  
**Sent:** Tuesday, April 16, 2013 11:36 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1973/1 Topic: Exclude charitable gift annuities from regulation by OCI

Please RUSH

Please Jacket LRB -1973/1 for the ASSEMBLY.